



**2016 ANNUAL
REPORT TO THE
LEGISLATURE**

**WHISTLEBLOWER
RETALIATION
COMPLAINTS**

Prepared by

State Personnel Board

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**ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE
COMPLAINTS OF RETALIATION FOR THE DISCLOSURE OF INFORMATION BY
PUBLIC EMPLOYEES (WHISTLEBLOWER RETALIATION)**

July 31, 2017

Introduction

Government Code section 19683, subdivision (f) provides, “In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the State Personnel Board, by June 30 of each year¹, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.” This report is prepared by the State Personnel Board (SPB) for the calendar year of January 1, 2016 through December 31, 2016.

Background

Protection for state employees from retaliation for having reported improper governmental activities was first provided in 1985. At that time, the SPB was assigned responsibility for investigation of complaints of whistleblower retaliation.

Amendments to the whistleblower retaliation protections were made in 1987, 2000, 2001, 2004, 2010, 2011, 2012, and 2013. In 2002, SPB adopted regulations to implement the whistleblower retaliation laws.

Effective March 8, 2006, the SPB’s regulations were revised to include the requirement that the Executive Officer refer cases for investigation or schedule an informal hearing before an administrative law judge. Effective August 18, 2010, the SPB’s regulations concerning the whistleblower statutes were revised as part of a broader revision to SPB’s regulations.

Information

Whistleblowing is defined as either disclosing information that an employee or applicant of a state agency, a community college, the California Supreme Court, a court of appeal, a superior court, or the Administrative Office of the Courts, reasonably believes is evidence of an improper governmental activity, or refusing to obey an illegal order or directive.

¹ Six reports were produced between 1987 and 1992. In 1992, Chapter 710 legislation (Government Code section 7550.5) instituted a moratorium on most reports to the Legislature. The moratorium was renewed in 1994 and 1996, and became inoperative on October 1, 1999. After the moratorium was repealed as of January 1, 2000, Whistleblower Retaliation Reports have been produced on an annual basis beginning with the calendar year 2000.

Three agencies play major roles in investigating whistleblower retaliation, the California State Auditor (CSA), the Office of the Inspector General (OIG), and the SPB.

CSA accepts complaints in reference to improper governmental activities. CSA is the investigative agency that has jurisdiction to investigate the underlying improper governmental activity.

OIG's specific responsibility in whistleblower retaliation complaints is to investigate complaints of retaliation against those who report misconduct on the part of state correctional agencies and employees. OIG may, with the approval of the complaining employee, forward its investigative findings to the SPB for the purpose of bringing disciplinary action against an employee who is found to have violated the retaliation provisions when the department fails to do so. As an independent agency, OIG reports to the Governor. OIG also provides impartial analysis and policy recommendations to the Governor, the Legislature, and correctional administrators.

SPB is the adjudicatory body that hears and decides whistleblower retaliation complaints filed by state civil service or community college employees; employees of the Supreme Court, Courts of Appeal, Superior Courts, or the Administrative Office of the Courts; or applicants, whom have alleged being subjected to an improper personnel action for disclosing improper governmental activity or refusing to obey an illegal order or directive.

The SPB has jurisdiction in whistleblower retaliation cases when all of the requirements listed below are met:

- A state or community college applicant or employee or employee of the Supreme Court, Courts of Appeal, Superior Courts, or the Administrative Office of the Courts files the complaint. "Employee" includes any former employee who met the above criteria during his or her employment.
- The complaint states a prima facie case of retaliation.
- The complaint is filed within one year of the most recent act of reprisal.
- The names and business addresses of each individual and entity alleged to have committed reprisal or retaliatory acts are provided.
- The complainant provides a sworn statement, under penalty of perjury, that the contents of the complaint are true.

SPB does not accept filed complaints when any of the above requirements are not met or the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

Complaint Activity

In calendar year 2016, 55 whistleblower retaliation complaints were filed with the SPB. This is nearly identical to calendar year 2015, when the SPB received 53 whistleblower retaliation complaints. Of the 55 complaints filed in 2016, 16 of those complaints were accepted.

Of the 16 cases accepted, 11 were initially referred to the informal hearing process. Six of these cases were dismissed following an informal hearing and 4 were withdrawn prior to the informal hearing. One of the cases referred to informal hearing was granted and an evidentiary hearing was conducted. Four cases, including the case that was granted following the informal hearing, were dismissed following an evidentiary hearing and one case was settled prior to an evidentiary hearing.

**SPB Whistleblower Retaliation Complaints Activity Report
(January 2016 – December 2016)**

Total Filed	Appeals Accepted	Appeals Not Accepted ²
55	16	39

I. Disposition of Whistleblower Complaints Administered within the Informal Hearing Process

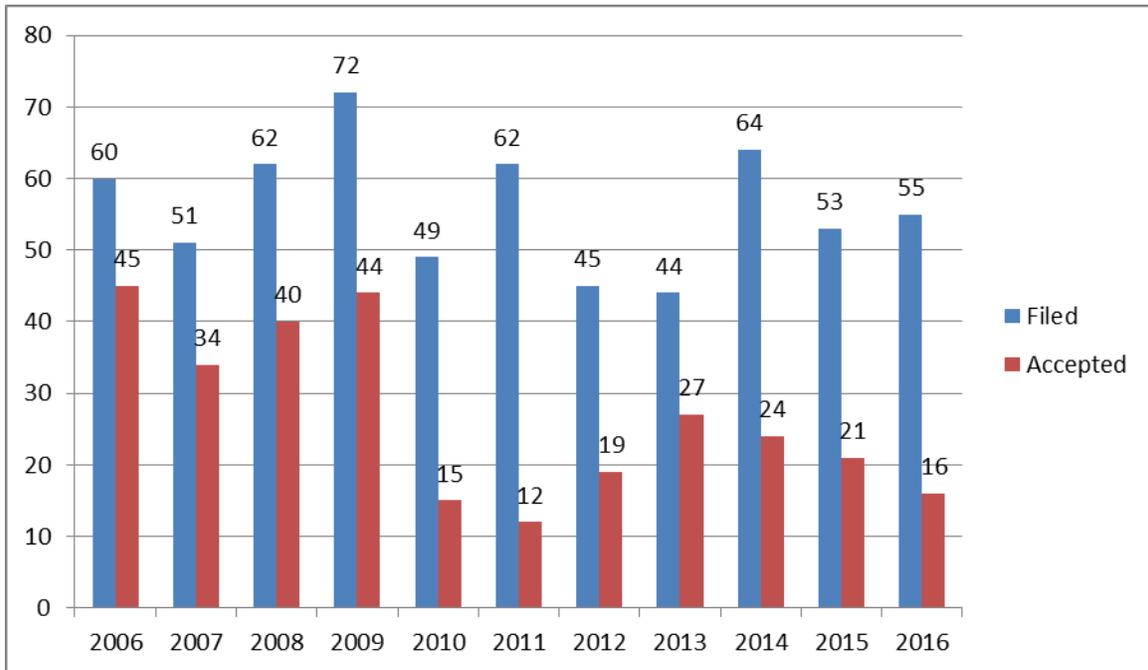
Granted	Dismissed	Withdrawn
1	6	4

II. Disposition of Whistleblower Complaints Administered within the Evidentiary Hearing Process

Granted	Dismissed	Settled
0	4	1

² SPB does not accept filed appeals when: (a) The complaint fails to state a prima facie case of retaliation; (b) the complaint is not filed within one year of the most recent act of reprisal; (c) the complaint is not signed under penalty of perjury; or (d) the SPB does not have jurisdiction over the employing entity (e.g. University of California, California State University).

III. Comparison of Whistleblower Appeals filed each Year



**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2016**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
1	16-0003W	1/4/2016	Closed - Withdrawn	CDCR		No	
2	16-0043W	1/13/2016	Closed - No Prima Facie Case	CDCR		Yes	
3	16-0164W	1/28/2016	Closed - No Prima Facie Case	Lottery Commission		Yes	
4	16-0165W	2/3/2016	Closed - Notice of Findings (Granted)	DOT		Yes	Informal
5	16-0165WE	6/28/2016	Closed - Board Resolution (Dismissed)	DOT		Yes	Evidentiary
6	16-0192W	2/8/2016	Closed - No Prima Facie Case	DDS		Yes	
7	16-0233W	2/18/2016	Closed - No Prima Facie Case	ALRB		Yes	
8	16-0275WEK	2/24/2016	Closed - Board Resolution (Dismissed)	EDD	16-0275WEK (AA)	Yes	Evidentiary
9	16-0318W	3/3/2016	Closed - No Jurisdiction	CDSS		Yes	

³ AA: Whistleblower Retaliation Complaint consolidated with prior Adverse Action appeal.
DC: Whistleblower Retaliation Complaint consolidated with prior Discrimination Complaint.
E: Converted to formal evidentiary hearing.
WB: Whistleblower Retaliation Complaint consolidated with other Whistleblower Retaliation Complaint.

⁴ RDAT: indicates whether complainant requested disciplinary action be taken.

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2016**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
10	16-0334W	3/4/2016	Closed - Withdrawn	DPH		No	
11	16-0341W	3/7/2016	Closed - No Prima Facie Case	CDCR		Yes	
12	16-0509W	3/24/2016	Closed - No Prima Facie Case	DSH		Yes	
13	16-0525WEK	3/28/2016	Closed - Board Resolution (Dismissed)	HCS	16-0525WEK (AA)	Yes	Evidentiary
14	16-0554WEK	4/4/2016	Closed - Stipulated Settlement Agreement	DOT	16-0554WEK (AA)	Yes	
15	16-0571W	4/6/2016	Closed – No Prima Facie Case	CDCR		Yes	
16	16-0610W	4/6/2016	Closed - No Prima Facie Case	BOE		No	
17	16-0699W	4/21/2016	Closed - No Prima Facie Case	DWR		No	
18	16-0707W	4/22/2016	Closed - No Prima Facie Case	CDCR		Yes	
19	16-0736W	4/25/2016	Closed - No Prima Facie Case	CDCR		No	
20	16-0753W	4/26/2016	Closed - No Prima Facie Case	CDCR		Yes	

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Calendar Year 2016**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
21	16-0769W	4/28/2016	Closed - No Prima Facie Case	DSH		Yes	
22	16-0790W	5/2/2016	Closed - No Prima Facie Case	DDS		Yes	
23	16-0792W	4/29/2016	Closed – No Prima Facie Case	SCIF		Yes	
24	16-0844W	5/10/2016	Closed – Notice of Findings (Dismissed)	CDCR/CCHCS		Yes	Informal
25	16-0852W	5/11/2016	Closed - No Jurisdiction	CSU		No	
26	16-0870W	5/16/2016	Closed - Withdrawn	UIAB		Yes	
27	16-1081W	6/13/2016	Closed - No Prima Facie Case	CDCR		Yes	
28	16-1112W	6/15/2016	Closed - No Prima Facie Case	CDCR		Yes	
29	16-1227W	6/28/2016	Closed - No Prima Facie Case	DOT		No	
30	16-1237WEK	7/1/2016	Closed - Discretionary	DOT		No	
31	16-1250W	7/5/2016	Closed - Withdrawn	DOT		No	

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2016**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
32	16-1341W	7/19/2016	Closed - No Prima Facie Case	DOT		No	
33	16-1342W	7/19/2016	Closed - No Prima Facie Case	CDCR		Yes	
34	16-1377W	7/25/2016	Closed - No Prima Facie Case	CDCR		No	
35	16-1413W	7/29/2016	Closed - No Prima Facie Case	CalFire		No	
36	16-1479W	8/8/2016	Closed – Notice of Findings (Dismissed)	CHP		No	Informal
37	16-1508W	8/10/2016	Closed - No Prima Facie Case	EDD		Yes	
38	16-1712W	9/6/2016	Closed - No Prima Facie Case	DWR		No	
39	16-1787W	9/16/2016	Closed - No Prima Facie Case	DSH		Yes	
40	16-1793W	9/19/2016	Closed - No Prima Facie Case	SCIF		No	
41	16-1810W	9/21/2016	Closed - No Prima Facie Case	CDCR/CCHCS		Yes	
42	16-1843W	9/27/2016	Closed - No Prima Facie Case	DOJ		No	

**Detailed Listing – Whistleblower Retaliation Complaints
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	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
43	16-1877W	9/29/2016	Closed - Withdrawn	DBO		Yes	
44	16-1897W	10/4/2016	Closed - No Prima Facie Case	CalVet		Yes	
45	16-1989W	10/17/2016	Closed - Withdrawn	CDCR/CCHCS		Yes	
46	16-2006W	10/19/2016	Closed - Withdrawn	DOT		Yes	
47	16-2016W	10/20/2016	Closed – Notice of Findings (Dismissed)	CDCR		Yes	Informal
48	16-2082W	11/1/2016	Closed – Notice of Findings (Dismissed)	CDCR		Yes	Informal
49	16-2132W	11/1/2016	Closed - No Prima Facie Case	CDSS		Yes	
50	16-2174W	11/15/2016	Closed - No Prima Facie Case	CDCR		Yes	
51	16-2227W	11/21/2016	Closed – Notice of Findings (Dismissed)	DSH		No	Informal
52	16-2231W	11/21/2016	Closed – No Prima Facie Case	DSH		No	
53	16-2250W	11/23/2016	Closed - No Prima Facie Case	ABC		Yes	

**Detailed Listing – Whistleblower Retaliation Complaints
Filed with SPB
Calendar Year 2016**

	Number	Appeal Date	Case Status	Department	Consolidated³	RDAT⁴	Informal/Evidentiary Hearing
54	16-2254W	11/23/2016	Closed – Notice of Findings (Dismissed)	ARB		Yes	Informal
55	16-2391W	12/19/2016	Closed – No Prima Facie Case	CDCR		Yes	